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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,933	04/16/2001	Corbett T. Hefner	81.010	9053
7590	12/30/2005		EXAMINER	
Timothy E. Newholm BOYLE, FREDRICKSON, NEWHOLM, STEIN & GRATZ, S.C. 250 Plaza, Suite 1030 250 East Wisconsin Avenue Milwaukee, WI 53202			HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 12/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/835,933	HEFNER, CORBETT T.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robin A. Hylton	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 October 2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 and 32-35 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 and 32-35 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 7, 2005 has been entered.

### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one inventive, or technical, feature of the claimed instant invention.

### ***Claim Rejections - 35 USC § 112***

3. Claims 17 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "said wicket holes" in line 1. There is insufficient antecedent basis for this limitation in the claim.

The structure of the bag is not clearly set forth in claim 34. Wherein it is clear claim 15 sets forth alternative language to establish one of the bag "sides" is longer than the other, claim 34 does not provide a "cohesive" link of the alternative language previously set forth. The language of the claim *additionally* sets forth the second side wall is longer.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 1,4, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas (ES 1,033,033).

Huertas teaches a half-and-half bag comprising a first plastic, mesh wall and a second film wall, the first wall having a reinforcing strip overlapping the top edge (see figure 4), and seams along the sides and bottom of the walls.

Huertas teaches the reinforcing strip and first side wall and the two walls are joined to each other by welding. There is no disclosure of other materials between the wall seams or between the mesh wall and the reinforcing strip. Thus, they are considered to be bonded directly to each other without other layers therebetween. Plastic is known to be synthetic resin.

Huertas does not teach the seams of the first and second walls extend to include bonding the reinforcing strip to the second side wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend the side seams of the bag to include securing the second side wall to the reinforcing strip. Doing so provides a more reinforced upper edge of the bag to avoid weakening of the seam edge and increases the storage space of the bag.

6. Claims 2,3,5-7,11,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas in view of Fox et al. (US 6,030,120).

Huertas teaches the claimed bag except for the mesh being a synthetic resin fiber mesh of cross-laminated air fabric material and the specific dimension of the reinforcing strip and seam strength set forth in the claims.

Regarding claims 2 and 3, Fox teaches the material of the bag can be synthetic resin fiber mesh of cross-laminated airy fabric material (col. 2, lines 46-48).

Regarding claims 5-7,11,13, and 14, Fox teaches the size of the strip is dependent upon the size of the bag and the size of the bag is dependent upon the intended use of the bag, i.e., the weight of the produce to be held in the bag.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to one of form the synthetic resin fiber mesh of cross-laminated airy fabric material as taught by Fox, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so produces a bag which operates in the same manner to produce the same result of a breathable produce bag.

Regarding the specified dimensions in the claims, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bag of dimensions suitable to hold specific produce having specific weights.

7. Claims 8 -10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas in view of Fox '120.

Huertas teaches the claimed bag except is silent regarding "wicket holes" for hanging the bag for filling. The holes (4) therein can be deemed "wicket holes" because the term "wicket" imparts no structure to the claimed holes.

Alternatively, it would have been obvious to substitute wicket holes, as taught by Fox, for Huertas's hand holes because doing so would have allowed a stack of Huertas's bags to be attached to a wicket for the purpose of facilitating filling.

Regarding claims 9 and 10, it would have been further obvious to provide the wicket holes with slits extending from them, as also taught by Fox at **40**, because they facilitate removing the bag from a wicket.

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8. Claims 15,17,18,19, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas in view of Savigny (US 4,715,167).

Huertas teaches the claimed bag except for the seams of the first and second walls extend to include bonding the reinforcing strip to the second side wall, the second side wall protrudes above the upper edge of the reinforcing strip and first wall, and the specific dimensions of the width of the reinforcing strip. See figure 1 illustrating holes 4 in the second wall.

Huertas teaches the reinforcing strip and first side wall and the two walls are joined to each other by welding. There is no disclosure of other materials between the wall seams or between the mesh wall and the reinforcing strip. Thus, they are considered to be bonded directly to each other without other layers therebetween. Plastic is known to be a synthetic resin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend the side seams of the bag to include securing the second side wall to the reinforcing strip. Doing so provides a more reinforced upper edge of the bag to avoid weakening of the seam edge and increases the storage space of the bag.

Savigny teaches it is known to provide a bag with a second wall having a portion extending beyond an edge of a first wall, the second wall portion having wicket holes and a slit for associated use with a filling machine.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the second bag wall of Huertas to protrude above the upper edge of the reinforcing strip. Doing so would allow the bag to be easily used with a wicket on a filling machine and allows for easier opening of the bag for filling.

Regarding claim 17, Huertas teaches the claimed bag except is silent regarding "wicket holes" for hanging the bag for filling. The holes (4) therein can be deemed "wicket holes" because the term "wicket" imparts no structure to the claimed holes. Alternatively, it would have

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been obvious to substitute wicket holes, as taught by Savigny, for Huertas's hand holes because doing so would have allowed a stack of Huertas's bags to be attached to a wicket for the purpose of facilitating filling.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15 above, and further in view of Fox '120.

Huertas teaches the claimed bag except for the mesh being a synthetic resin fiber mesh of cross-laminated air fabric material.

Fox teaches the material of the bag can be synthetic resin fiber mesh of cross-laminated airy fabric material (col. 2, lines 46-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to one of form the synthetic resin fiber mesh of cross-laminated airy fabric material as taught by Fox, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so produces a bag which operates in the same manner to produce the same result of a breathable produce bag.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas in view of Savigny.

Huertas teaches the claimed bag except for the seams of the first and second walls extend to include bonding the reinforcing strip to the second side wall, the second side wall protruding above the upper edge of the reinforcing strip and first wall, and the specific dimensions of the width of the reinforcing strip.

Huertas teaches the reinforcing strip and first side wall and the two walls are joined to each other by welding. There is no disclosure of other materials between the wall seams or

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between the mesh wall and the reinforcing strip. Thus, they are considered to be bonded directly to each other without other layers therebetween. Plastic is known to be a synthetic resin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend the side seams of the bag to include securing the second side wall to the reinforcing strip. Doing so provides a more reinforced upper edge of the bag to avoid weakening of the seam edge and increases the storage space of the bag.

Savigny teaches it is known to provide a bag with a second wall having a portion extending beyond an edge of a first wall, the second wall portion having wicket holes and a slit for associated use with a filling machine.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the second bag wall of Huertas to protrude above the upper edge of the reinforcing strip. Doing so would allow the bag to be easily used with a wicket on a filling machine and allows for easier opening of the bag for filling.

Huertas teaches the claimed bag except is silent regarding "wicket holes" for hanging the bag for filling. The holes (4) therein can be deemed "wicket holes" because the term "wicket" imparts no structure to the claimed holes. Alternatively, it would have been obvious to substitute wicket holes, as taught by Fox, for Huertas's hand holes because doing so would have allowed a stack of Huertas's bags to be attached to a wicket for the purpose of facilitating filling.

11. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas in view of Savigny.

Huertas teaches the claimed bag except for the second side wall protruding above the upper edge of the reinforcing strip and first wall and the specific dimensions of the width of the reinforcing strip.

Savigny teaches it is known to provide a bag with a second wall having a portion extending beyond an edge of a first wall, the second wall portion having wicket holes and a slit for associated use with a filling machine.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the second bag wall of Huertas to protrude above the upper edge of the reinforcing strip. Doing so would allow the bag to be easily used with a wicket on a filling machine and allows for easier opening of the bag for filling.

***Response to Arguments***

12. Applicant's arguments with respect to claims 1-20 and 32-35 have been considered but are moot in view of the new ground(s) of rejection. The rejection was necessitated by the amendments to the claims.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_  
Signature \_\_\_\_\_

Date \_\_\_\_\_

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

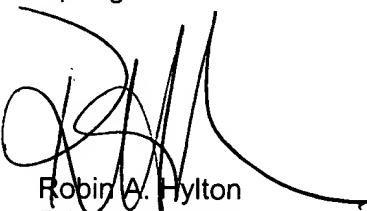
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
December 21, 2005

  
Robin A. Hylton  
Primary Examiner  
GAU 3727